Accordingly, I hereby declare that the said election is void and in consequence thereof, and not for reason of any impropriety on his part, the first respondent herein ought not to have been elected.

A certificate under section 36 of the Election Offences Act 1954 to this effect will be issued forthwith.

The second respondent shall bear the costs of this petition.

Order accordingly.

Solicitors: *Nijar & Nijar; Yacob Atan & Associates.*

CHIN NAM BEE DEVELOPMENT SDN. BHD. v. TAI KIM CHOO & 4 ORS.

[A.C.J. (Eusoff Chin J.) 21 January 1988]

[Muar – Civil Appeal No. 11-5 of 1986]

Contract – Sale and purchase of house – Payment of an additional sum – Whether payment voluntarily made – Whether can be refunded – Whether term "coercion" in section 15 of Contracts Act 1950 (Act 136) applicable to section 73 of the Act – "Coercion" – Meaning of – Contracts Act 1950, ss. 2, 14, 15 & 73.

The respondents were purchasers of certain houses to be constructed by the appellants. Each of the respondents had signed a sale and purchase agreement to purchase a house at $29,500.

The present dispute related to the payment of an additional sum of $4,000 by each respondent to the appellants. The magistrate had found that the payment of $4,000 was not voluntary but made under a threat by the appellants to cancel the respondents' bookings for their houses. The main ground of appeal by the appellants was that the $4,000 was paid voluntarily and not under any coercion. The respondents, however, claimed a refund of the additional sums paid.

Held, dismissing the appeal: (1) the definition of the word "coercion" in section 15 of the Contracts Act 1950 does not apply to section 73. The word "coercion" in the context of section 73 of the Act should be given its ordinary and general meaning since there is nothing under section 15 which says that the word "coercion" should apply throughout the Act. The definition of "coercion" in section 15 should only apply for the purpose contained in section 14 as section 14 of the Act specifically says so;

(2) the amount paid by the respondents must be refunded to them under section 73 of the Contracts Act 1950.

Cases referred to:

(1) *C.M. Naested* v. *The State of Perak* [1925] 5 F.M.S.L.R. 185 (refd).

(2) *Kanhaya Lal* v. *National Bank of India Ltd.* 1913 I.L.R. Vol. XL (Calcutta series) 598 (refd).

CIVIL APPEAL.

K. Chandra for the appellants.

Tan Hock Kim for the respondents.

Cur. Adv. Vult.

Eusoff Chin J.: The plaintiffs (respondents) in the four consolidated civil suits, Batu Pahat Magistrate's Court Civil Action Nos. 234/80, 235/80, 289/80 and 292/80, were purchasers of houses to be constructed by the defendants (appellants). Each plaintiff had signed a sale and purchase agreement to purchase a house at $29,500. There was no dispute on this.

The dispute concerned the payment by each plaintiff of an additional sum of $4,000 to the defendants. The plaintiffs alleged that they were threatened and forced by Yap Soon Kean (D.W.2), a director of the defendant company, to pay the $4,000 each to the defendants as an increase in the purchase price, or else the defendant would cancel their bookings for the houses.

D.W.2 said that the $4,000 was for cost of additional works to be done to each house not on the request of the plaintiffs but agreed to by them at his oral suggestion. The magistrate having heard the witnesses formed the conclusion that the $4,000 was an increase of the cost of each house, paid by each plaintiff under threat that the defendant would cancel his booking for the house. The magistrate found that the plaintiffs had not agreed to the increase of $4,000 because under the sale and purchase agreement clause 13, a request for additional works must be made in writing.

The defendants had alleged that the plaintiffs had agreed to the additional work orally. The magistrate found that this was not so. He failed to understand how the defendant could have fixed $4,000 for the additional works in April 1979, when in fact the architect (D.W.1) employed by the defendant for the additional work gave his quotations for the additional work to the defendant only some six months later, on September 28, 1979, and the final instruction was given by the defendants to the contractor for the additional work on November 10, 1979. According to the

defendants, the additional works were completed by the end of 1980. The plaintiffs, however, did not even know what were the additional works which had been done to their houses. D.W.2 had admitted that the additional works cost $3,570 but he had asked the plaintiffs to pay $4,000 each so that the defendants could make some profits.

The magistrate in his judgment stated:

"On going through the evidence of all the plaintiffs in the four cases and that of the defence I came to the conclusions that on the balance of probabilities:

(1) None of the plaintiffs in the four cases had asked for the alleged additional works.

(2) The defendant company through D.W.2 had obtained the extra ($4,000) payment by means of threats and coercion.

(3) The payment was in fact an increase in the purchase price.

(4) The request for quotations for the alleged additional works was only made as a cover up by the defendant company as a result of protests by its customers (including the plaintiffs) over the extra payment."

Having read the record of appeal, I found no good or sufficient cause to disturb the findings of the magistrate that the payment of the $4,000 to the defendants was not voluntary, the plaintiffs having been threatened to do so on pain of having their bookings for the houses cancelled.

The plaintiffs' (respondents') counsel submitted that the $4,000 was refundable to the plaintiffs under section 73 of the Contracts Act (Act 136).

The main ground of appeal by the defendants is that the $4,000 was paid voluntarily, and not under any coercion. The appellants' (defendants') learned counsel submitted that even if there was a threat to cancel the bookings of the houses it did not amount to "coercion" as defined under section 15 of the Contracts Act 1950, and therefore the plaintiffs could not avail themselves of the provisions of section 73 of that Act. He cited an unreported judgment in Johore Bahru High Court Civil Suit No. 76/1978 (copy of the judgment tendered to me in open court) in which the court there formed the opinion that the definition of "coercion" in section 15 applies to section 73 of the Act. However, the learned judge in that case concluded that the plaintiffs there had, for business reasons, consented to agree to pay the increased purchase price of their houses.

With respect, I do not agree to the learned counsel's contention that the definition of the word "coercion" in section 15 of the Act applies to section 73.

Sections 14 and 15 of the Contracts Act state:

"*Free consent:* 14. Consent is said to be free when it is not caused by –
(a) coercion, *as defined in section 15*; (emphasis is mine)
(b) undue influence, as defined in section 16;
(c) fraud, as defined in section 17;
(d) misrepresentation, as defined in section 18; or
(e) mistake, subject to sections 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of *such* coercion, undue influence, fraud, misrepresentation, or mistake.

Coercion: 15. 'Coercion' is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation – It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

Illustration
A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

A afterwards sues B for breach of contract at Taiping.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done."

The Contracts Act 1950 is divided into ten (10) parts. Part III deals with "Of Contracts, Voidable Contracts And Void Agreements", and contains sections 10 to 16. Nowhere under this Part III is found a clause as those found in section 2, Part I of the Act, to the effect that words and expressions as defined in section 2 are to be given those defined meanings unless the contrary intention appears from the contexts. The opening sentence of section 2 of the Act states:

"In this Act, the following words and expressions are used in the following senses, *unless a contrary intention appears from the context:'*

(emphasis added)

Section 73 of the Contracts Act 1950 comes under Part VI of the Act, which deals with matters described as "Of Certain Relations Resembling Those Created By Contract".

Section 73 of the Act states:

"73. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations

(a) A and B jointly owe $100 to C. A alone pays the amount to C, and B, not knowing this fact, pays $100 over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive."

It would be difficult to give effect to section 73 illustration (b) if the word "coercion" is to be given the meaning as defined in section 15 of the Act. They appear to be in conflict with each other. Therefore the word "coercion" in the context of section 73 of the Act should be given its ordinary and general meaning since there is nothing under section 15 which says that the word "coercion" should apply throughout the Act. The definition of "coercion" in section 15 should only apply for the purpose contained in section 14, as section 14 of the Act specifically says so.

In *C.M. Naested* v. *The State of Perak,*[1] the plaintiff applied for a grant of 23,000 acres of land in the mukim of Utan Melintang. Upon the approval of his application, he paid a certain sum for survey fees calculated upon the area approved as being one block. In the subsequent survey, the land was cut up into 16 blocks, but plaintiff was not informed that this was being done. Upon demand made by the District Officer, the plaintiff's agents, Messrs. Harrisons and Crosfield, paid a further sum for survey fees, the calculation of the amount being based upon the 16 blocks.

The plaintiff sued to recover the sum so paid by Messrs. Harrisons and Crosfield.

The trial judge held that the only fees payable were the prescribed fees upon the approved area, that the demand for further fees was not authorized by the Land Rules 1904, but that the payment being a voluntary payment, made by the agents within the scope of their general authority, the plaintiff could not recover.

He therefore dismissed the action.

The plaintiff appealed.

The Supreme Court held that the payment made by Messrs. Harrisons and Crosfield was under the circumstances not a voluntary payment, and was made without consideration, and that plaintiff was entitled to recover the money, with interest, both as damages for breach of contract, and as damages in tort.

Woodward C.J. said at p. 201:

"Under these circumstances, it is impossible to consider the payment as a voluntary one. The parties were not on equal terms. On the one side was the plaintiff, a private individual, and his agents a mercantile firm, on the other the government of the state, which had the power of saying 'If you do not pay you shall not have your grant.' "

and further said at p. 203:

"So in this case, the evidence shows that Messrs. Harrisons and Crosfield paid the money, not voluntarily, but to prevent the threatened consequences of non-payment.

I think that the plaintiff is entitled to recover the money as a payment made without consideration, and under coercion, within the meaning of section 72 of the Contract Enactment."

The Privy Council in *Kanhaya Lal* v. *National Bank of India Ltd.*[2] held that the meaning of the word "coercion" as defined under section 15 of the Indian Contract Act (Act IX of 1872) should be confined to the interpretation of the word "coercion" as found under section 14 of the Indian Act, and that the words "coercion" as found in section 72 of the Indian Contract Act should be given its ordinary meaning. Lord Moulton, delivering the judgment of the Privy Council, at pp. 611 to 613 said:

"The main contention, however, was that the allegations in the plaint did not show 'coercion' according to Indian law. It was contended that nothing could be 'coercion' under Indian law unless it satisfied the definition of 'coercion' which is found in section 15 of the Indian Contract Act and that the allegations in the plaint failed so to do because they did not show that the 'unlawful detaining or threatening to detain' the property was 'with the intention of causing any person to enter into an agreement.' Their Lordships are of opinion that this argument is not sound and that it is based on a fundamental misunderstanding of the object and effect of section 15 of the Indian Contract Act.

Section 15 forms part of a chapter which specially deals with the requisites of a valid contract. This chapter commences with section 10, which may be regarded as the fundamental section, and which reads as follows:

'All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.'

The sections immediately following proceed to define the terms used in this fundamental section. Sections 11 and 12

are devoted to the interpretation of the phrase 'competent to contract'. Section 13 deals with the term 'consent'. Sections 14 to 18 deal with the phrase 'free consent'. In so doing section 14 commences by defining when consent is said to be 'free' and lays down, that it is so when it is not caused by 'coercion' as defined by section 15, 'or undue influence, fraud,' *etc.* It will therefore be seen that section 14 relates to 'free consent' as an element in the making of contracts. It is natural, therefore, that when 'coercion' comes to be defined in section 15 for the purposes of section 14 it is defined as follows:

'Coercion' is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

It is clear, therefore, that this definition of 'coercion' is solely a definition which applies to the consideration whether there has been 'free consent' to an agreement so as to render it a contract under section 10. This explains why in the definition of 'coercion' it is limited to an unlawful act done 'with the intention of causing the person to enter into an agreement'. But it would be to make nonsense to the statute if it were to be taken to mean that 'coercion' in a legal sense could only exist if the object was to bring about a contract. Indeed such an interpretation would render the Act inconsistent with itself. Section 72, which is in Chapter 5, which deals with 'Certain Relations Resembling Those Created By Contract', reads as follows:

'A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.'

and Illustration B to that section reads as follows:

'A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.'

It is impossible to contend that the coercion referred to in this section or in the above Illustration is 'with the intention of causing any person to enter into an agreement.' The word 'coercion' must therefore be there used in its general and ordinary sense as an English word, and its meaning is not controlled by the definition in section 15. That definition is expressly inserted for the special object of applying to section 14 *i.e.* to define what is the criterion whether an agreement was made by means of a consent extorted by 'coercion' and does not control the interpretation of 'coercion' when the word is used in other surroundings."

Having read and compared sections 10, 14, 15 and 72 of the Indian Contract Act, I found them to be *in pari materia* with sections 10, 14, 15 and 73 of our Contracts Act 1950.

Since I have found no good or sufficient cause to upset the findings of facts by the magistrate that the plaintiffs/respondents in this case had paid the extra $4,000 to the defendants/appellants without consideration, but paid under threat by the appellants to cancel their bookings for their houses, the amount paid by the plaintiffs must be refunded to them under section 73 of the Contracts Act 1950.

I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *K. Chandra & Co.; Tan & Tan.*

OH CHENG LIM v. LIM EAM WOOI

[A.C.J. (Edgar Joseph Jr. J.) 7 January 1988]

[Penang – Civil Appeal No. 33 of 1982]

Landlord and Tenant – Order for vacant possession of controlled premises – Appeal – Whether landlord reasonably required the premises as residence – Burden of proof – Greater hardship – Burden of proof – Other accommodation – Burden of proof – Meaning of "for occupation by himself – Interference by appellate court on question of greater hardship – Only in exceptional cases – Rent Control Act 1966, ss. 16(1)(f) & 16(1)(n).

This was an appeal by a tenant ("the defendant") arising out of an order for vacant possession of controlled premises ("the premises") made by the learned magistrate in favour of the landlord ("the plaintiff"). The ground upon which the plaintiff sought and eventually obtained possession was that the premises were reasonably required by her and her children as a residence in accordance with the provisions of section 16(1)(f) of the Control Rent Act 1966 ("the Act").

The case for the plaintiff is that although she is also the owner of the neighbouring premises ("the neighbouring premises"), a two bedroom house, which she occupies with her two sons, their wives and children, a total of 12 occupants, the space available was totally inadequate with the result that she and two of her grandchildren have to sleep either in the hall downstairs or outside the bedrooms, whilst the rest would sleep in the two bedrooms.

On the other hand, the case for the defendant is that the plaintiff's reliance upon the provisions of the Act was not *bona fide;* in particular, it was contended that the plaintiff did not reasonably require the premises for occupation by herself or any member of her family because she already had a residence at the neighbouring premises where she had been residing for many years and still is residing with her two sons, their wives and the grandchildren. The defendant went further and alleged that the true reason for the plaintiff seeking possession was because she had failed to obtain his agreement to an increase in rent from $15 p.m. to $40 p.m.